

[T]he claimant had a pre-existing condition of asthma. The claimant has failed to prove that there is attached to his employment, a particular and peculiar hazard of his disease, asthma, which distinguishes his employment from other occupations and which creates a hazard of such disease which is in excess of the hazard of such disease in general. He failed to prove that his asthma had its origin in a special risk of such disease connected with his type of employment and that it resulted from

that source as a reasonable consequence of the risk. Further, the claimant has failed to prove that he has suffered any permanent aggravation of his condition due to his work activities. It is determined that the date of accident would be July 19th, 2011, since the claimant was continuously exposed to irritants while working. These exposures caused temporary aggravations of his condition. K.S.A.44-a01(b) [sic] and K.S.A. 44-508(f)(2) is clear that an injury is not compensable because work was a triggering or precipitating factor. It is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders it symptomatic.<sup>1</sup>

Claimant urges the Board to find the claim compensable and reverse the Award. Respondent asks that the ALJ's decision denying compensation be affirmed.

The issues presented for review are:

(1) Whether claimant proved he contracted an "occupational disease" within the meaning of the Act.

(2) Whether claimant's alleged occupational disease arose out of and in the course of his employment with respondent.

(3) Average weekly wage.

(4) Whether claimant satisfied the written notice provisions set forth in the Act for occupational diseases.<sup>2</sup>

(5) The nature and extent of claimant's disability.

#### **FINDINGS OF FACT**

Having reviewed the evidentiary record, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings:

When the regular hearing occurred on November 5, 2012, Mr. Moore was 36 years old. He had graduated from high school and had received additional training in law enforcement and mechanics. Claimant commenced employment for respondent as a water hauler in November 2004. About a year later, he changed positions and became a pumper. Claimant continued to perform the duties of a pumper until he last worked for respondent on July 19, 2011, the date the ALJ found claimant sustained a work-related injury.

---

<sup>1</sup> ALJ Award at 13.

<sup>2</sup> Respondent admitted receiving written notice of the claim on October 5, 2011. R.H. Trans. at 11.

Claimant's duties as a pumper normally included servicing about 23 oil wells, 16 gas wells, 4 tank batteries and 3 disposal wells. Claimant alleged his duties as a pumper exposed him to the following chemicals: biocide 5000, water treatment concentrate, iron check pellets, water treatment balls, 50 WA gas sweetener, emulsion breaker paraffin solvent, corrosion slash scale (corrosion/scale) inhibitor,<sup>3</sup> OPS 2507 paraffin solvent, scale remover, corrosion inhibitor, super CORR 1A, emulsion breaker intermediate, WCS 5177 GA corrosion/scale inhibitor,<sup>4</sup> WCS1158D corrosion/scale inhibitor, hydrogen sulfide, ethane, propane, I-butane, N-butane, I-pentane, N-pentane, hexane plus C6 and methanol. Claimant testified that "[m]ost of those gasses were naturally vented at the oil wells."<sup>5</sup> Claimant testified some of these chemicals and substances were in solid form, some were liquids, and some were gaseous.

Claimant is asthmatic, although he testified he was in good health before he started working for respondent. He did not have any breathing problems regarding perfumes, colognes, hair sprays or petroleum products. Claimant's testimony at the regular hearing including the following exchange:

Q. Tell the court exactly what that involved as far as familiarizing yourself with safety requirements.

A. Any time that we went to a safety meeting or had a new chemical change in our area that we worked with we were given MSDS sheets and told to read them, review them and make sure that anybody coming into the area knew about them and also that they were to be placed at location.

Q. You say an MSDS sheet, what does that mean?

A. Material safety data sheet. That was a sheet given to us by the manufacturer that told us the health risks, the environmental risks, occupational hazards of working with chemical[s].<sup>6</sup>

Claimant testified he began having some slight breathing problems in 2006, which worsened into 2007. Claimant testified:

Q. Tell the court what kind of problems you were having let's say approximately 2007.

---

<sup>3</sup> This chemical may have been incorrectly taken down by the court reporter, in which the proper designation should be "corrosion/scale inhibitor."

<sup>4</sup> Claimant's testimony may have listed this substance twice.

<sup>5</sup> R.H. Trans. at 22.

<sup>6</sup> *Id.* at 18.

A. I was having a hard time breathing. My right side of my lungs when I take deep breaths would feel like I was getting pinched, a lot of pain. Occasionally, it caused me to get a little dizzy, had a hard time, you know, breathing. Some days it was really bad. If it was hot outside it would be worse. If it was cooler it wouldn't be as bad. Started off the morning it just got worse throughout the day. Sometimes I couldn't sleep.

Q. Had you ever had these kind of problems before?

A. Never. Nothing like that.

Q. Did the problems get worse?

A. Yes, they did. In 2009 started to get really bad, went to see another doctor, told my employer about it. He suggested that I go see a doctor. In fact, would not let me come back until released by a doctor.<sup>7</sup>

Claimant filled out a workers compensation form and submitted it to his supervisor, Kent Pendergraft. Respondent scheduled claimant to see Dr. Seger, who prescribed medication and an inhaler to control claimant's asthma. At some point, Dr. Seger released claimant to return to work without restrictions. Respondent provided claimant with a dust particulate filter which respondent's safety coordinator said was not an OSHA approved breathing apparatus.

Claimant and another supervisor, Wade Lepke, continued to have discussions about claimant's difficulty breathing, tightness in his chest and increased pain in his right side. Mr. Moore claimed Mr. Lepke told him to keep his mouth shut if he wanted to keep his job.

When claimant contacted Dr. Seger's office for additional treatment he was informed Dr. Seger had expired. Respondent sent claimant to Dr. Drew Miller, who referred claimant to a pulmonary specialist, Dr. Janel Harting, in Wichita. As of the regular hearing, claimant continued under treatment with Dr. Harting and had not been released to return to work. Claimant testified he was receiving benefits under a policy of long-term disability insurance.

On October 3, 2011, claimant filed with the Kansas Division of Workers Compensation an application for hearing, which alleged claimant sustained an "[o]ccupational pulmonary disease" on or about July 19, 2011. The extent of the injuries or disease claimed was "[a]sthma exacerbated by occupational exposures."<sup>8</sup>

---

<sup>7</sup> *Id.* at 22-23.

<sup>8</sup> Application for Hearing at 1.

Following his last day of work for respondent, claimant worked as a temporary employee for GameStop during the 2011 holiday season. Claimant next worked for Payless from February 2012 until July 9, 2012. On October 8, 2012, claimant commenced employment with Tractor Supply, where he was working when the regular hearing was conducted.

Claimant testified he was unaware he had been diagnosed with asthma in 2007. Claimant testified that his asthma was exacerbated by colognes, bleach, hair spray, and petroleum products outside of the workplace. He has experienced allergies all of his life.

In 2007, claimant experienced problems with anxiety which, according to him, caused pressure in his chest and pains in his back. Claimant testified that his current asthmatic symptoms are different than the symptoms of anxiety he had in 2007.

Kent Pendergraft, respondent's production foreman in the Kansas district, supervised the pumpers and office employees in his district. Mr. Pendergraft testified he became aware of claimant's breathing problems in early 2009.

Mr. Pendergraft testified:

Q. Mr. Pendergraft, do you have any recollection of Mr. Moore ever giving you a written document claiming workers' compensation benefits?

A. No, I don't.

Q. If he had given you such a document, or if any employee gave you such a document, is there something that you would regularly and customarily do with the document?

A. Anytime I receive a document of that nature, work release, anything like that, it goes to my immediate supervisor who is David Cook. It goes to Tulsa and also a copy of it goes to Leslie Lynn who is -- she's the HR supervisor in the Tulsa office.<sup>9</sup>

Mr. Pendergraft recalled a discussion with claimant regarding the recommendation of Dr. Sager that claimant wear a mask to protect him from inhaling chemical fumes.

Dr. Janel Harting, board certified in internal medicine, pulmonology and critical care medicine, examined claimant on August 2, 2011, at the request of claimant's attorney. The doctor reviewed claimant's medical records, took a history and performed a physical examination. A chest x-ray and a pulmonary function study were performed. Dr. Harting reviewed the results of the testing and diagnosed claimant with asthma exacerbated by occupational exposures.

---

<sup>9</sup> Pendergraft Depo. at 8.

Dr. Harting testified:

Q. Based upon your review of the diagnostic testing and the examination and based upon your diagnosis, do you have an opinion as to whether there has been a change in the physical structure of Mr. Moore's body?

A. Yes.

Q. And what is that opinion?

A. My opinion is that with exposure, his asthma was worsened and that there were inflammatory changes probably at the genetic level. There are inflammatory changes in his lungs, but though -- though we do not see them on lung function tests, there are changes in his lungs, yes.<sup>10</sup>

Dr. Harting referred claimant to an occupational and environmental pulmonary specialist, Dr. Susanna Von Essen, of Omaha, Nebraska. Dr. Harting prescribed a different asthma medication, Dulera. She also recommended that respondent provide claimant with an "OSHA-provided respirator."<sup>11</sup> On August 18, 2011, Dr. Harting changed claimant's restrictions: "Patient cannot return to his work before consulting with an occupational specialist in Omaha in September."<sup>12</sup>

Following his consultation with Dr. Von Essen, claimant returned for a follow-up appointment with Dr. Harting on September 16, 2011. Dr. Harting reviewed Dr. Von Essen's report with claimant. Dr. Harting recommended that claimant not return to work for respondent as a pumper because if claimant did so "he would continue to exacerbate his asthma which could lead to permanent lung dysfunction."<sup>13</sup> Dr. Harting opined that claimant's work was the prevailing factor causing the exacerbation of claimant's underlying asthma and the need for medical treatment.

On March 14, 2012, claimant returned to see Dr. Harting due to continuing problems controlling his asthma. Claimant's medication was changed from Dulera to Advair HFA because he was having a burning sensation in his lungs.

Claimant experienced problems tolerating the Advair, as well as the dusty dry air in his hometown and exposure to perfumes at his then employer, Payless. Dr. Harting saw claimant on April 20, 2012, and Dr. Harting's recommendations remained the same.

---

<sup>10</sup> Harting Depo. at 8.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.* at 20.

On September 28, 2012, claimant once again returned for a follow-up office visit with Dr. Harting. Dr. Harting found claimant's asthma and allergies were well controlled. In Dr. Harting's opinion, claimant will need regular maintenance visits with his personal physician and Dr. Harting to reevaluate his pulmonary disease.

Dr. Harting reviewed a list of claimant's work tasks prepared by human resources consultant Jerry Hardin. For the 15 year period before the date of alleged disablement, Mr. Hardin identified 58 work tasks and the physical requirements associated with each task. Dr. Harting concluded claimant could no longer perform 35 out of the 58 tasks for a 60% task loss. The New Act, which became effective on May 15, 2011, requires, for purposes of determining task loss in claims in which work disability is appropriate, the focus must be on work tasks performed by claimant in the 5-year period before the date of alleged accident, not the 15-year period applicable under the Old Act. Dr. Harting's opinion was accordingly that claimant could not perform all of the 34 tasks that he performed in the 5-year period before the alleged date of disablement.

On December 12, 2011, Dr. George Fluter, a board certified specialist in physical medicine and rehabilitation, evaluated claimant at the request of his attorney. Dr. Fluter reviewed claimant's medical records, took a history and performed a physical examination. Claimant complained of pain affecting his chest and abdomen. Dr. Fluter diagnosed claimant with occupational-related asthma. The doctor opined that there was a causal/contributory relationship between claimant's asthma and his "work-related exposures."<sup>14</sup>

Dr. Fluter issued a second report dated January 13, 2012, in which he rated claimant's permanent impairment of function based on the *AMA Guides*.<sup>15</sup> Dr. Fluter found a 0% impairment of function to the body as a whole under that part of the *AMA Guides* applicable to the respiratory system. However, due to alleged lack of treatment, claimant will not return to his "previous status of normal good health."<sup>16</sup> On that basis, Dr. Fluter added a 3% permanent functional impairment to the body as a whole. Dr. Fluter added another 2% to the body for claimant's chest and abdominal pain. Using the Combined Values Chart, these impairments combine for a 5% whole body permanent functional impairment.

Dr. Fluter performed a second physical examination on May 1, 2012. The doctor reviewed additional medical records and performed another physical examination, Dr. Fluter diagnosed claimant with asthma with an occupationally related component; chest wall/thorax tenderness associated with dysesthesia; diffuse abdominal tenderness; and

---

<sup>14</sup> Fluter Depo., Ex. 4 at 3.

<sup>15</sup> American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

<sup>16</sup> Fluter Depo., Ex. 3 at 1-2

splenomegaly. Dr. Fluter again opined there is a causal/contributory relationship between claimant's pulmonary condition and his "work related exposures."<sup>17</sup>

Following the second examination, Dr. Fluter added yet more impairment than he previously found. Specifically, Dr. Fluter added 3% impairment to the body as whole for alleged thoracic nerve dysfunction. The previous 5% and the additional 3% combine for a total 8% permanent functional impairment to the whole body.

Dr. Fluter reviewed the list of claimant's former work tasks prepared by Mr. Hardin and concluded claimant could no longer perform 35 of the 58 tasks for a 60% task loss. Claimant performed 34 tasks in the 5-year period before the alleged date of disablement by occupational disease. In Dr. Fluter's opinion, claimant was unable to perform any of the tasks, for a 100% task loss.

Dr. Fluter testified:

Q. But you are not able to tell us why as a person he started -- he got into a situation where things he was exposed to irritated his airways and caused him to have an asthmatic condition, are you?

A. I don't think any human can tell you that.

Q. All we know is his body changed somehow to a point where being exposed to certain things caused him lung irritation or airway irritation?

A. Something triggered him to have the development of asthma.

Q. We don't know what that is?

A. As far as a specific chemical or specific exposure?

Q. Or even if it was a chemical or an exposure?

A. Well, that gets into some of the issues of pathophysiology for any disease, sort of this you have certain genetic factors and you have environmental factors and you might have the genetic factor but not the environmental factor, you might have the environmental factor without the genetic factor and you don't develop the disease. But if you have the genetic predisposition and the environmental trigger occurs, then you develop it.<sup>18</sup>

---

<sup>17</sup> *Id.*, Ex.4 at 3.

<sup>18</sup> *Id.* at 34-35.



At respondent's request, Dr. Allen Parmet, a practicing physician with board certifications in occupational medicine and aerospace medicine, reviewed claimant's medical records, diagnostic studies including a pulmonary function study. Dr. Parmet also reviewed the deposition testimony of Drs. Flutter and Harting, along with claimant's sworn testimony. Dr. Parmet diagnosed claimant with asthma, which he described as inflammation of the lungs causing restricting airflow.

Dr. Parmet testified about the causes of asthma:

In the workplace I may see exposure to rather unique chemicals such as isocyanates which are used in making foam rubber. And these can trigger a very unique kind of inflammatory reaction. Then you have a specific chemical. Most of the time you can't do that.

You have to do specific allergy testing to demonstrate a specific immune system response. And you have to demonstrate the pulmonary responsiveness to a situation or a specific agent. That can be done. You challenge people by giving them an inhalation of a specific chemical. And if they respond excessively and become very restricted and develop airway restriction then you have a specific response and a specific cause and effect.<sup>19</sup>

Dr. Parmet explained why individuals respond asthmatically to external stimuli:

That is probably almost certainly on a genetic basis that some individuals develop an over-reactive immune response to allergens in the system. And allergens are foreign protein. Non-self is the term. The immune system is tuned to recognize your own body, what's called self, and attack what is non-self.

So an enemy invader of bacteria or fungus, sometimes pollen, dander of some other source is interpreted as non-self. So the immune system attacks it, releasing antibodies or humoral effects to produce inflammation trying to destroy the invader. Sometimes there's no invader. It's simply attacking your own body.<sup>20</sup>

Dr. Parmet opined that there is not a greater incidence of asthma for individuals working on oil rigs. He further opined that individuals who have a body mass index<sup>21</sup> of 30% or more have a higher level of inflammation in the body and also have a number of other diseases which may or may not include asthma. In Dr. Parmet's opinion, asthma is

---

<sup>19</sup> Parmet Depo. at 10.

<sup>20</sup> *Id.* at 11.

<sup>21</sup> The transcript of Dr. Parmet's deposition mistakenly refers to claimant's "body max index." *Id.* at

an ordinary disease of life and it is possible that the prevailing factor in claimant's development of asthma is due to obesity:

Q. Does a reoccurrence of the breathing difficulties caused by occupational asthma cause some type of scarring in the lung or a permanent injury to the cellular tissue?

A. That depends on the status of the individual and how severe they are and how they are treated. And you have to prove that over time. If that were to occur, if somebody were to have repeated, severe, prolonged asthma attacks, they were never under control, and you could document progression over time, then you might indeed be able to show that there was an anatomical change. It takes a long time in severe asthma to do that. But it can happen.

Q. Is that what happens as a result of the reactive airways disease that you referred to? In other words, reactive airway disease goes on for a period of time and produces the cellular damage?

A. No. There's no clear transition between reactive airway disease and asthma except it's persistent. But that doesn't mean there is an anatomical change that's occurred. To demonstrate the anatomical change you either have to have biopsy or you have to be able to identify changes on CT scan or by other objective means such as barometry showing decline in function performance over time. And that takes a very long time to do.<sup>22</sup>

Dr. Parmet opined: "The rule is when you stop the stimulus you stop the exposure to the stimulant and the asthma goes away."<sup>23</sup>

Based on the *AMA Guides*, Dr. Parmet determined that claimant fell within Class 1 respiratory impairment which results in a 0% functional impairment.

#### **PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 2011 Supp. 44-501a(b) and (c) provide:

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

---

<sup>22</sup> *Id.* at 24-25.

<sup>23</sup> *Id.* at 26.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508(h) provides:

"Burden of proof " means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2011 Supp. 44-5a01 provides in relevant part:

**Occupational diseases; treated as injuries by accident under workmen's compensation act; defined; limitations of liability; aggravations.** (a) Where the employer and employee or workman are subject by law or election to the provisions of the workmen's compensation act, the disablement or death of an employee or workman resulting from an occupational disease as defined in this section shall be treated as the happening of an injury by accident, and the employee or workman or, in case of death, his dependents shall be entitled to compensation for such disablement or death resulting from an occupational disease, in accordance with the provisions of the workmen's compensation act as in cases of injuries by accident which are compensable thereunder, except as specifically provided otherwise for occupational diseases. In no circumstances shall an occupational disease be construed to include injuries caused by repetitive trauma as defined in K.S.A. 44-508, and amendments thereto.

(b) "Occupational disease" shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. "Nature of the employment" shall mean, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease which distinguishes the employment from other occupations and employments, and which creates a hazard of such disease which is in excess of the hazard of such disease in general. The disease must appear to have had its origin in a special risk of such disease connected with the particular type of employment and to have resulted from that source as a reasonable consequence of the risk. Ordinary diseases of life and conditions to which the general public is or may be exposed to outside of the particular employment, and hazards of diseases and conditions attending employment in general, shall not be compensable as occupational diseases. . . .

Claimant has not alleged that his asthma developed from a single traumatic event, nor has he claimed his asthma was caused by repetitive trauma. Claimant's sole theory of recovery is he developed an occupational disease, asthma, as a consequence of his

exposures to various chemicals in his work as a pumper for respondent. Given claimant's allegations, determining the compensability of the claim starts with this question: has claimant proven by a preponderance of the credible evidence the elements of an "occupational disease" within the meaning of K.S.A. 44-5a01.

The ALJ found the date of disablement was on or about July 19, 2011. Claimant continued to perform his duties for respondent as a pumper until that date. Claimant alleged his date of disablement was July 19, 2011, and that date is consistent with the provisions of K.S.A. 44-5a04(a). Hence, the New Act applies to this claim.<sup>24</sup>

The Board agrees with Judge Fuller that claimant did not sustain his burden to prove an occupational disease.

The evidence establishes asthma is an ordinary disease of life.<sup>25</sup> The evidence does not specifically define the health risks—of asthma or any other disease or condition—associated with the chemicals and other substances to which claimant says he was exposed.

Dr. Fluter's causation opinion, assuming it has any validity, is primarily based on an assumption of work exposures of a vague and undefined nature. A review of Dr. Fluter's three narrative reports reveals no reference to specific chemicals or substances other than 1) crude oil and 2) hydrogen sulfide. Dr. Fluter admitted that the association between asthma and low-level hydrogen sulfide exposure "is not a particularly strong one."<sup>26</sup> No material safety data sheets were made part of the record, nor was any evidence offered which documented the health risks associated with each chemical or substance. There was no evidence presented which showed the extent or frequency of claimant's exposures to any of the chemical and substances he alleged caused him to contract asthma. According to Dr. Parmet, several of the chemicals to which claimant alleged exposure were not ". . . known pulmonary irritants except at extraordinarily high levels, approaching or above the explosive limit. . . ."<sup>27</sup>

The opinions of Dr. Fluter are speculative. Likewise, the opinions of Dr. Harting are largely conjectural. A review of Dr. Harting's reports reveals her reliance on claimant having been exposed to "chemical/gasses exposures in [claimant's] work environment,"

---

<sup>24</sup> See K.S.A. 2011 Supp. 44-505(c). The Board notes that the outcome of this claim would have been the same under the Old Act.

<sup>25</sup> Parmet Depo. at 13.

<sup>26</sup> Fluter Depo., Ex. 2 at 4, Ex. 4 at 1.

<sup>27</sup> Parmet Depo., Ex 2 at 7-8.

and “occupational exposures.”<sup>28</sup> The only chemical Dr. Harting apparently was aware claimant was exposed was hydrogen sulfide. However, Dr. Harting was unaware of any treatise or study that documents any correlation between exposure to hydrogen sulfide gas and asthma.

The Board finds that the opinions of Dr. Parmet are more persuasive than the other expert medical witnesses.

The evidence does not establish the frequency of claimant’s alleged chemical exposures. The record does not suggest any of claimant’s exposures occurred in an enclosed environment. There is no evidence that shows claimant’s occupation, trade or employment involved a particular or peculiar hazard of developing asthma which distinguished such occupation, trade or employment from other occupations or employments or from the hazard to which the general public was exposed of contracting asthma. Thus, the evidence does not prove that claimant was at any greater risk or hazard of developing asthma than the general public or workers in other occupations.

Claimant did not sustain his burden to prove the elements required to establish a compensable “occupational disease” under K.S.A. 2011 Supp. 44-5a01. The ALJ properly denied compensation.

#### **CONCLUSIONS OF LAW**

1. Claimant did not sustain his burden to prove he suffers from an occupational disease as defined in the New Act.

2. Given finding No. 1, all other issues are moot and will not be addressed by the Board.

The record does not contain a filed fee agreement between claimant and his attorney. K.S.A. 2011 Supp. 44-536(b) mandates that the written contract between the employee and the attorney be filed with the Director for review and approval. Should claimant’s counsel desire a fee be approved in this matter, he must file and submit his written contract with claimant to the ALJ for approval.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>29</sup> Accordingly, the findings and conclusions set forth above reflect the majority’s decision and the signatures below attest that this decision is that of the majority.

---

<sup>28</sup> Harting Depo., Ex. 2 at 1.

<sup>29</sup> K.S.A. 2011 Supp. 44-555c(k).

**AWARD**

**WHEREFORE**, it is the Board's decision that the Award of ALJ Pamela J. Fuller dated February 6, 2013, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2013.

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

\_\_\_\_\_  
BOARD MEMBER

c: John C. Nodgaard, Attorney for Claimant,  
jnodgaard@arnmullins.com  
John D. Jurcyk, Attorney for Respondent and its Insurance Carrier,  
jjurcyk@mvplaw.com; mvpkc@mvplaw.com  
Pamela J. Fuller, ALJ